



Federal Communications Commission
Washington, D.C. 20554

DA 07-3948

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CaribeVision Station Group, LLC
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Re: Applications for Consent to Transfer Control of S&E Network Inc.
WJPX(TV), San Juan, PR; Fac. ID No. 58340
WKPV(TV), Ponce, PR; Fac. ID No. 58341
WJWN-TV, San Sebastian, PR; Fac. ID No. 58342
File No. BTCCT-20070509ADG

Application for Assignment of License
WIRS(TV), Yauco, PR, Fac. ID No. 39887
File No. BALCT-20070509ADK

Requests for Continuing Satellite Authorization
WKPV(TV), WJWN-TV, WIRS(TV)

Dear Counsel:

This concerns the above-referenced applications seeking consent to: (1) transfer control of S&E Network, Inc., licensee of WJPX(TV), San Juan, Puerto Rico, WKPV(TV), Ponce, Puerto Rico, and WJWN-TV, San Sebastian, Puerto Rico from Intermedia Espanol Holdings, LLC ("Intermedia") to CaribeVision Station Group, LLC ("CaribeVision"); and (2) assign the license of WIRS(TV), Yauco, Puerto Rico from Televiscentro of Puerto Rico, LLC ("Televiscentro"), an indirect subsidiary of InterMedia, to CaribeVision. As part of these transactions, CaribeVision requests continuing satellite authority for WKPV(TV), WJWN-TV, and WIRS(TV), all satellites of WJPX(TV).¹

In *Television Satellite Stations*² the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.³ If an applicant does not qualify for the presumption, the Commission

¹ 47 C.F.R. § 73.3555, Note 5.

² 6 FCC Rcd 4212, 4215 (1991) (subsequent citations omitted).

³ *Id.* at 4213-14.

will evaluate the proposal on an *ad hoc* basis, and grant the application if there are compelling circumstances that warrant approval.⁴

CaribeVision notes that these stations have previously been approved as satellites at various times over the years.⁵ CaribeVision asserts that the premises upon which those findings were based, and in particular the economic circumstances in Puerto Rico, have not changed. CaribeVision further notes that the Media Bureau recently approved the acquisition by Intermedia Partners VII of two television stations and five satellite stations, including the stations involved in the instant transaction.⁶ CaribeVision states that the proposed transaction will, in effect, break off a piece of that transaction and introduce a new, independent voice into the Puerto Rico television market. The proposed transaction, states CaribeVision, will thus add to the diversity in the market, thereby serving the public interest. In addition, CaribeVision asserts that continuation of the stations' satellite status will permit it to continue making high-quality programming available to residents living beyond the economic center of San Juan by maintaining signal coverage on the island generally equivalent to that enjoyed by the stations' major competitors.

WIRS(TV). CaribeVision explains that there is an area of City Grade overlap between the 80 dBu signal contours of the stations on the northeast coast in the vicinity of San Juan and small pockets of overlap on the north-central coast. However, CaribeVision notes that the Commission has concluded that the central mountain range that separates Yauco and San Juan, the communities of license of WIRS(TV) and WJPX(TV), "cause significant signal blockage," thus warranting grant of satellite status to stations located on the opposite side of the mountain range from their parent stations.⁷ Second, WIRS(TV)'s community of license, Yauco, qualifies as an underserved area under the Commission's transmission test because WIRS(TV) remains the only television station licensed to that community. Third, CaribeVision argues that there is substantial and long-standing evidence of the station's inability to operate as a full-service, stand alone station. CaribeVision submits a Declaration from Jose E. Ramos, the general manager of WJPX(TV) with oversight responsibility for the satellite stations. Ramos states that operation of the satellite as a full-service, stand-alone station is not a financially viable option. Specifically, Ramos attests that WIRS(TV) does not generate any revenues through the sale of local advertising time. Thus, in the absence of the rebroadcast arrangement with WJPX(TV), CaribeVision argues that WIRS(TV) would lack the financial wherewithal to continue operations.

WKPV(TV) and WJWN-TV. CaribeVision notes that there is no City Grade overlap between WJPX(TV) and either WKPV(TV) or WJWN-TV. Although the predicted City Grade contours of the two satellites overlap, CaribeVision explains that the Commission has concluded in the past that no actual overlap exists between the two stations when terrain is considered. Moreover, the San Sebastian area to which WJWN-TV is licensed remains "underserved," with that facility being the only full-service station licensed to that community. While Ponce, to which WKPV(TV) is licensed, does not qualify as

⁴ *Id.* at 4212.

⁵ See *Paxson Communications of San Juan, Inc.*, 16 FCC Rcd 14139 (2001) (granting continued satellite exceptions for WKPV(TV) and WJWN-TV); *Broadcast Actions*, Public Notice, Report No. 45633 (Dec. 16, 2003) (approving operation of WIRS(TV) as a satellite of station WJPX(TV)).

⁶ *Telecentro of Puerto Rico, LLC*, 22 FCC Rcd 2176 (2007) (granting consent to transfer control of S&E Network, Telecentro, and WNJX-TV, Inc. to Intermedia Partners VII and approving continuing satellite status for WKPV(TV), WJWN-TV, WIRS(TV), WTIN(TV) and WNJX-TV).

⁷ See, e.g., *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994); *Hector Nicolau*, 5 FCC Rcd 6370 (1990).

“underserved,” CaribeVision contends that due to the stringent economic circumstances and the unusually severe terrain conditions on the island, the Commission has not previously considered this fact to be an obstacle to satellite status. Moreover, as demonstrated in the Ramos Declaration, neither WKPV(TV) nor WJWN-TV would be economically viable as a stand-alone station. Neither station generates any revenues through the sale of local advertising. CaribeVision contends that the continued satellite operations of these facilities are crucial to the stations’ financial viability.

Regarding the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.⁸ However, CaribeVision does not base its satisfaction of the third criterion on efforts to sell the three satellite stations. In support of the continuing waiver request, Caribe asserts that based on the economic conditions in Puerto Rico, it is clear that no alternative operator is available to acquire any of the satellite stations as stand-alone operations. As noted above, none of the satellite stations generate any revenues through the sale of local advertising time. In addition, CaribeVision explains that while the communities of Puerto Rico are not included in any Nielsen Designated Market Area (“DMA”), the Commission has repeatedly treated Puerto Rico as a single market for purposes of the multiple ownership rules. Likewise, states CaribeVision, advertisers expect to be able to reach the entire island with their messages. However, CaribeVision reiterates that the terrain of the island makes achievement of that goal with a single station a virtual impossibility. Additionally, CaribeVision notes that poor cable and DBS penetration on the island precludes any significant additional audience reach from these sources.

Furthermore, CaribeVision explains that the small size and concentrated nature of the market add further complications. CaribeVision asserts that while the island is only 125 miles by 30 miles, there are in excess of 30 television stations authorized and more than 100 radio stations. According to CaribeVision, the result is an intense level of competition among broadcast stations for advertising dollars. Moreover, CaribeVision explains that the generally poor economic condition of Puerto Rico outside of San Juan makes the generation of sufficient revenue to survive quite difficult. As a result, CaribeVision states that a symbiotic relationship has developed between stations in San Juan, the economic center of the island, and the stations in poorer, outlying areas. These relationships, argues CaribeVision, whether through satellite status or time brokerage/rebroadcast agreements, allows the San Juan stations to achieve the island-wide coverage that advertisers demand while providing the stations in more remote communities the economic support and quality that they need to survive. The Commission has long recognized that areas outside the San Juan population center lack the economic basis to sustain full-power operations.⁹ Moreover, CaribeVision contends that the problems caused by Puerto Rico’s mountainous terrain are aggravated by the generally poor economic conditions on the island and, more specifically, in the population centers beyond San Juan. Specifically, CaribeVision explains that, according to the US Census Bureau, in the year 2000 the median per capita income in San Juan in 1999 was \$12,437. By contrast, the median per capital incomes for the communities of license for the stations involved in the instant transaction were dramatically lower. The 1999 median per capita income in Mayaguez was \$8,003, in Ponce was \$7,276, in San Sebastian was \$5,681, and in Yauco was \$6,434.¹⁰

⁸ 6 FCC Rcd at 4215.

⁹ See *T. Michael Whitney*, 16 FCC Rcd 2297 (2001); *JEM Communications, Inc.*, 9 FCC Rcd 4874 (1994).

¹⁰ The gross national income per capita, a measurement of the income actually accruing to residents of the island, is currently only about 30 percent of the United States’ average.

Based on our review of the materials submitted, we find that CaribeVision has set forth information sufficient to warrant continued satellite operations for WKPV(TV), WJWN-TV and WIRS(TV) under our *ad hoc* analysis. We agree that, given the terrain and economic factors militating against successful full-service operation in Puerto Rico outside of San Juan, it does not appear likely that an alternative operator would be willing to operate these satellites as full-service stations. The factors upon which we based our most recent grant of satellite authorization for these stations, less than three months ago, have not changed to such an extent as to alter the determination here. Although CaribeVision's showing does not satisfy our "presumptive" satellite standard, the unique terrain and economic obstacles to full service operation in Puerto Rico constitute "compelling circumstances" warranting continued satellite status. Thus, we conclude that continued operation of WKPV(TV), WJWN-TV and WIRS(TV) as satellites of WJPX(TV), San Juan, Puerto Rico would serve the public interest. In view of the foregoing, and having determined that the applicants are qualified in all respects, we find that a grant of the above-referenced applications would serve the public interest, convenience and necessity.

ACCORDINGLY, the request of CaribeVision Station Group, LLC for continued operation of WKPV(TV), Ponce Puerto Rico, WJWN-TV, San Sebastian, Puerto Rico, and WIRS(TV), Yauco, Puerto Rico as satellites of WJPX(TV), San Juan, Puerto Rico, pursuant to the satellite exception to the duopoly rule, Section 73.3555, Note 5, of the Commission's rules, **IS GRANTED**.

FURTHERMORE, the above-referenced applications for consent to: (1) transfer control of S&E Network, Inc., licensee of WJPX(TV), San Juan, Puerto Rico, WKPV(TV), Ponce, Puerto Rico, and WJWN-TV, San Sebastian, Puerto Rico from Intermedia Espanol Holdings, LLC to CaribeVision Station Group, LLC (File No. BTCCT-20070509ADG); and (2) assign the license of WIRS(TV), Yauco, Puerto Rico from Televiscentro of Puerto Rico, LLC to CaribeVision (File No. BALCT-20070509ADK) **ARE GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau